

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GRAYS HARBOR ADVENTIST
CHRISTIAN SCHOOL, a Washington non-
profit organization; GREG G.
BOGDANOVICH, an individual; and MARY
LAFOREST, an individual, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

CARRIER CORPORATION, a Delaware
corporation,

Defendant.

Case No. C05-5437 RBL

STIPULATED PROTECTIVE ORDER

This matter having come before the Court pursuant to the agreement of the parties, and the Court
finding as follows:

GOOD CAUSE FINDINGS

The parties recognize that in the course of discovery proceedings it may be necessary to disclose to
the other party or parties certain asserted confidential and proprietary information, but each wishes to
ensure that such information shall not be used for any purpose other than this action, and shall not be made
public by another party, or be otherwise used or disseminated by another party, beyond the extent

1 necessary for purposes of this action. In addition, the parties contemplate that confidential information may
2 be produced by a non-party or non-parties. The parties therefore seek to facilitate the production and
3 protection of such information. Documents that are to be protected under this Stipulated Protective Order
4 are alleged to contain confidential information including research, development, financial, personal and/or
5 commercial information that is valuable. In this case, the “good cause” for keeping these documents
6 confidential includes the need to preserve the disclosing entity's current and/or future competitive
7 advantage, the need to facilitate discovery and to provide a mechanism for protecting information the
8 disclosing party deems confidential, subject to the review and challenge provisions noted below, and the
9 need to protect the parties from undue annoyance, embarrassment or oppression, and thereby avoid
10 specific prejudice or harm to the disclosing party.
11

12 **ORDER**

13
14 Pursuant to Fed. R. Civ. P. 26(c), and good cause existing as reflected above, the Court ORDERS
15 that the following procedures shall be used in this action for the protection against the improper disclosure
16 or use of confidential information produced in discovery or filed with the Court:
17

18 Certain depositions, documents, information, or things produced in response to any discovery taken
19 pursuant to the Federal Rules of Civil Procedure during the course of this matter (the “Litigation”) may be
20 designated “Confidential” (hereinafter “Confidential Information”). The assessment of whether and/or the
21 extent to which information qualifies as "Confidential Information" for the purposes of this Order shall be
22 determined pursuant to Federal Rule of Civil Procedure 26.

23 **I. DEFINITION OF CONFIDENTIAL INFORMATION**

24 “Confidential Information” shall mean information, recorded, stored, or maintained for any reason
25 in any medium, including but not limited to print, electronic, or digital, that the party designating the
26 information as confidential (the “Designating Party”) reasonably believes to fall within the following
27 definition:
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1 1. Proprietary, commercial, financial or client information, which is defined as:

2 a. "Trade secret," as set forth in the Washington Trade Secrets Act, RCW 19.108.010,
3 meaning information, including a formula, pattern, compilation, program, device, method, technique, or
4 process that:

5 (i) Derives independent economic value, actual or potential, from not
6 being generally known to, and not being readily ascertainable by proper
7 means by, other persons who can obtain economic value from its disclosure
8 or use; and

9 (ii) Is the subject of efforts that are reasonable under the circumstances
10 to maintain its secrecy.

11 b. Research, development, commercial or financial information that is of a competitively
12 sensitive nature and that a reasonably prudent business person in the applicable field would not release to
13 or share with the public in the ordinary course of business, and the release of which would likely cause
14 proprietary, competitive, or economic harm to the disclosing party or entity.

15 c. Personal information where disclosure of that information would violate that
16 person's privacy. A "person" shall include any natural person and, where relevant, a corporation, joint
17 stock association, or an unincorporated association. The standard for determining whether a person's
18 privacy would be violated shall be based on the standard set forth in the Washington Public Disclosure Act,
19 RCW 42.17.255, as follows:

20 A person's "right to privacy," "right of privacy," "privacy," or "personal
21 privacy," is invaded or violated if disclosure of information about the person:
22 (1) would be highly offensive to a reasonable person, and (2) is not of
23 legitimate concern to the public.

24 Notwithstanding any other provision in this Protective Order, the Order shall not apply to
25 information that is publicly available. Confidential Information shall be used and disclosed only in the
26 above-captioned case. No person afforded access to Confidential Information shall use or disclose
27 Confidential Information for the purpose of business or competition or for any purpose other than this
28 litigation.

II. DESIGNATION OF CONFIDENTIAL INFORMATION

Each party or non-party that designates information, materials or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standard. A Designating Party must take care to designate for protection only those parts of material, documents, items or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized designations are prohibited.

All Confidential Information or any document containing Confidential Information shall be designated by marking the word "Confidential" on each page of the Confidential Information or, in the case of Interrogatories, on each Interrogatory Answer containing Confidential Information. All documents designated as "Confidential" shall be subject to the provisions of this Protective Order.

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed Confidential. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the legend Confidential at the top of each page that contains Confidential Information.

Deposition testimony that a Designating Party reasonably believes will contain Confidential Information shall only be taken in front of persons entitled to access such information pursuant to this Order. Portions of Confidential testimony may be designated as Confidential by the Designating Party by making an appropriate statement on the record before the close of the deposition, in which case the reporter shall stamp or write "contains Confidential Information" at the top of each page containing Confidential Information. Transcript pages containing Confidential Information must be separately bound by the Court Reporter. Deposition testimony so designated shall be treated as Confidential Information within the terms of this Protective Order.

1 Any party seeking to use information designated as Confidential during a deposition shall seek the
2 deponent's agreement on the record to abide by the terms of this Order. If the deponent refuses to assent,
3 no Confidential Information shall be disclosed to the deponent.

4 The failure to designate all or a portion of the record as confidential shall not preclude a party from
5 so designating all or a portion of the transcript as confidential within fifteen (15) calendar days following
6 receipt by the deponent and the parties of the entire deposition transcript. During this period, a party may
7 notify the other parties in writing that the deposition testimony includes confidential testimony. The party
8 claiming confidentiality shall designate specific portions of the transcript and any exhibits as confidential
9 and shall give written notice to opposing counsel of the specific portions of transcripts and specific exhibits
10 which have been designated as confidential. Only such designated portions and exhibits shall be
11 confidential at the expiration of the 15-day period.

12 **III. ACCESS TO CONFIDENTIAL INFORMATION**

13 Documents and testimony designated as "Confidential," including all information derived
14 therefrom, shall not be disclosed to or used by anyone except the following persons, unless otherwise
15 expressly permitted by this Protective Order. Counsel for the parties may agree upon and stipulate to the
16 addition of other persons or categories of persons to this list.

- 17 1. The Court, including any personnel assisting the Court, stenographers or other persons
18 involved in taking or transcribing court or deposition testimony in this action;
- 19 2. The Defendant, and the named putative class representative plaintiffs, (and if a class is
20 certified, then the named class representatives) and their respective counsel, including
21 paralegal, clerical, and secretarial employees of counsel of record;
- 22 3. Mediators or litigation support services, including outside copying services retained by a
23 party to assist that party in this action, provided such persons agree in writing to abide by
24 and be bound by the terms of this Order in the form attached hereto as Exhibit A, prior to
25 the disclosure of Confidential Information to them;
- 26 4. Individuals whom counsel reasonably believes to be potential lay witnesses with a need to
27 receive the Confidential Information, provided such persons agree in writing to abide by
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1 and be bound by the terms of this Order in the form attached hereto as Exhibit A, prior to
2 the disclosure of Confidential Information to them;

3 5. Persons retained or associated by any party for the purposes of furnishing consulting legal
4 services in this matter, provided such persons agree in writing to abide by and be bound by
5 the terms of this Order in the form attached hereto as Exhibit A, prior to the disclosure of
6 Confidential Information to them;

7 6. Persons retained or associated by any party for the purposes of furnishing consulting
8 expert services or for giving expert testimony in this matter, provided such persons agree
9 in writing to abide by and be bound by the terms of this Order in the form attached hereto
10 as Exhibit A, prior to the disclosure of Confidential Information to them; and further
11 provided that prior to the first disclosure of Confidential Information to such persons,
12 Counsel who has retained the consultant or expert will make good faith inquiry to
13 determine if the consultant or expert is currently retained or employed by a company that
14 manufactures residential furnaces. If the consultant or expert is currently so retained or
15 employed, counsel will: (1) notify the producing party of the identity of the employing or
16 retaining company and the documents counsel who has retained the consultant or expert
17 intends to disclose to him or her; and (2) refrain from disclosing any Confidential
18 Information to the consultant or expert for five court days after giving the producing party
19 such notice in order to provide the producing party sufficient time to seek an order
20 precluding the disclosure. The burden of persuasion in any such proceeding shall be on the
21 Designating Party. If a motion is filed, the Confidential Information will not be disclosed
22 to the consultant or expert until the Court has ruled. If no motion is filed, the Confidential
23 Information may be disclosed to the consultant or expert, in keeping with the provisions of
24 this Order;

25 7. Any person who is an author, original source of information, addressee, or intended
26 recipient of, or who previously had access to, the Confidential Information;
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8. Deposition witnesses who first agree in writing to abide by and be bound by the terms of this Order in the form attached hereto as Exhibit A;
9. Any other person as to whom the party that designated the document or information as Confidential has consented to disclosure in advance; and
10. Any other person authorized by the Court.
11. Duly executed copies of Exhibit A shall be provided to opposing counsel as soon as reasonably practicable for all other persons.

IV. PRESERVATION OF CONFIDENTIAL INFORMATION

Each party to this Protective Order shall take reasonable measures in storing documents and testimony designated as Confidential to limit access to those persons who are authorized under the terms of this Order to inspect, review, or receive such information.

If any party to this Protective Order becomes aware that Confidential Information has been disclosed to any person other than those identified in this Order, that party shall give notice to counsel for the Designating Party, and without prejudice to any other rights or remedies of the parties, make every effort to prevent further disclosure by it or the person who received the Confidential Information.

V. INADVERTENT DISCLOSURE

If any party inadvertently produces or discloses any Confidential Information without marking it with the appropriate legend, that party may give notice to the receiving party that the information should be treated in accordance with the terms of this Protective Order, and shall forward appropriately stamped copies of the items in question. Within five (5) business days of the receipt of substitute copies, and upon request, the receiving party shall return the previously unmarked items and all copies thereof. The inadvertent disclosure shall not be deemed a waiver of confidentiality so long as such designation shall be made within sixty (60) days of the inadvertent production or disclosure by the party making the inadvertent disclosure.

VI. CHALLENGES TO CONFIDENTIAL DESIGNATIONS

Any party shall have the right to challenge (a “Challenging Party”) any designation of confidentiality with respect to any information or documents designated as Confidential. A Challenging Party shall notify the Designating Party and request a written release of Confidential treatment of the information (the “Notification”). If a written release is not provided within ten (10) business days after the Notification, the information shall continue to be treated as confidential pursuant to the terms of this Agreement until and unless otherwise ordered by the Court.

A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. The burden of persuasion in any such challenge proceeding shall be on the Designating Party.

VII. EFFORTS BY NON-PARTIES TO OBTAIN CONFIDENTIAL INFORMATION

If any party has obtained Confidential Information under the terms of this Protective Order and receives a subpoena or other compulsory process commanding the production of Confidential Information, the party shall promptly notify the Designating Party. The parties will not object to the Designating Party having a reasonable opportunity to appear in the litigation or process commanding disclosure of such Confidential Information for the sole purpose of seeking to prevent or restrict disclosure thereof. The Designating Party shall bear the burdens and expenses of seeking protection in that court of its confidential material and nothing in this Order should be construed as authorizing or encouraging the Receiving Party to disobey a lawful directive from another court.

VIII. STATUS OF CONFIDENTIAL INFORMATION AT HEARING OR TRIAL

If a party wishes to use Confidential Information to support a dispositive motion or at trial, the party submitting the materials:

1. If seeking to have the record containing such information sealed, shall submit to the Court a motion to seal pursuant to GR 15(c)(2)(B).
2. If not seeking to have the record containing such information sealed and not the sole

1 Designating Party shall comply with either of the following requirements:

2 a. At least ten (10) business days prior to the filing or use of the Confidential Information,
3 the submitting party shall give notice to all other parties that designated the materials as Confidential
4 Information pursuant to this Protective Order, of the submitting party's intention to file or use the
5 Confidential Information, including specific identification (by reference to Bates number or other identifier)
6 of the Confidential Information. Any affected party may then file a motion to seal, pursuant to
7 GR 15(c)(2)(B), or

8 b. At the time of filing or desiring to use the Confidential Information, the submitting party
9 shall submit the materials pursuant to the following procedure: (i) the document(s) containing Confidential
10 Information shall be put in a sealed envelope, sealed in the envelope, and provided to the Court; (ii) the
11 envelope must be labeled "CONDITIONALLY UNDER SEAL;" and (iii) the party submitting the
12 document(s) must affix to the envelope a cover sheet that contains the case caption and states that the
13 enclosed record is subject to a motion to file the record under seal. Any affected party or non-party may
14 then file a motion to seal, pursuant to GR 15(c)(2)(B), within ten (10) business days after the document(s)
15 are provided to the Court. Such document(s) will not be filed with the Clerk of Court until the Court rules
16 on the motion to seal. If no party or non-party files a motion to seal, the document(s) will be filed,
17 unsealed, after the expiration of ten (10) business days.

18 **IX. PROCEDURES UPON TERMINATION OF ACTION**

19 Within sixty (60) calendar days following any settlement and the running of any applicable time to
20 appeal the final order entered in the Litigation, all parties shall return to the person who produced such
21 materials all copies of all Confidential Information obtained through discovery in this action or certify in
22 writing that all such documents have been destroyed.

23 **X. CONTINUING JURISDICTION**

24 All provisions of this Protective Order shall continue to be binding after the conclusion of this
25 action unless subsequently modified by agreement between the parties or order of the Court. The Court
26 shall retain jurisdiction of this matter for the purpose of enforcing this Protective Order.
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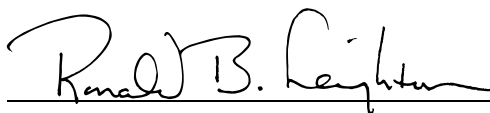
XI. MODIFICATION

This Protective Order may be modified by further order of the Court, for good cause shown, including, but not limited to the extent that a need arises to restrict the disclosure of specific information to counsel for the receiving party. The burden of persuasion for modifying this Protective Order shall rest with the party seeking the modification.

XII. NON-WAIVER

Neither the provisions of this Protective Order nor any disclosure by any party pursuant to this Protective Order, including to the extent that a specific need arises to restrict information to attorneys eyes only shall constitute a waiver, at any time or in any other litigation, of any objection as to attorney-client or work product privilege, relevance, over-breadth, burdensomeness, or other grounds for not producing material called for, and access to such materials shall only be as provided by the discovery rules and other applicable law.

Dated this 22nd day of December, 2005.

A handwritten signature in black ink, appearing to read "Ronald B. Leighton", written over a horizontal line.

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

1 It is so stipulated:

2 TOUSLEY BRAIN STEPHENS PLLC

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DICKERSON

3
4
5 By: /s/ Nancy A. Pacharzina

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26 *Attorneys for Plaintiffs and the Class*
27
28

EXHIBIT A
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

GRAYS HARBOR ADVENTIST CHRISTIAN SCHOOL, a Washington non-profit organization,
GREG G. BOGDANOVICH, an individual, and
MARY LAFOREST, an individual, on behalf of
themselves and all others similarly situated

Plaintiffs,

v.

CARRIER CORPORATION, a Delaware
corporation,

Defendant.

Case No. 3:05-cv-05437-RBL

CERTIFICATION OF ADHERENCE TO
PROTECTIVE ORDER

CERTIFICATION

I acknowledge that I, _____ (Name), of

_____ (Place and Position of Employment), am
about to receive Confidential Information supplied by _____ (Party). I
certify that I understand that such Confidential Information will be provided to me pursuant to the terms
and restrictions of the PROTECTIVE ORDER of _____, 2005, in *Grays Harbor
Adventist Christian School, et al. v. Carrier Corporation*, Civil Action No. 2:05-CV-5437RBL in the
U.S. District Court for the Western District of Washington. I further represent that I have received a
copy of and have read and understand that PROTECTIVE ORDER and that I agree to comply with and
to be bound by all of its applicable terms. I also understand that documents and/or information having
any confidential designation, and all copies, summaries, notes and other records that may be made
regarding such documents and/or information, shall be disclosed to no one other than persons qualified
under the PROTECTIVE ORDER to have access to such information. I further understand that the
Confidential Information provided to me shall be returned to counsel who provided the information to
me, in accordance with the PROTECTIVE ORDER.

1 I understand and acknowledge that violation of this Certification or the PROTECTIVE ORDER
2 may be punishable by Contempt of Court.
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6 Date _____

Signature _____

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8 Print Name: _____
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